global witness

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Evidence for the Inquiry into "The European Union and China" by the Foreign Policy, Defence and Development Sub-Committee of the House of Lords Select Committee on the European Union

1. Between June and September 2008, Global Witness undertook research in the Democratic Republic of Congo (DRC) on a substantial Collaboration Agreement (hereafter 'agreement') signed between a consortium of Chinese state-owned enterprises and the Congolese government. This research has formed the basis for the following evidence.

2. Using the agreement as a case study for Chinese involvement in Africa, Global Witness intends to highlight concerns about the lack of transparency surrounding the agreement and elements within the agreement which may be unfavourable to the country once the programme of work is implemented. These concerns are particularly important in view of the enormous economic significance of this agreement, especially in terms of the DRC's long-term financial commitments.

3. In Global Witness's opinion, the evidence demonstrates deficiencies in the approaches of the China consortium and the Congolese government in the following areas: lack of transparency; failure to involve democratically-elected institutions; risks for long-term financial stability; insufficient protection of labour rights; and concerns about sustainable development through the mineral-for-infrastructure deal.

Background to the Collaboration Agreement

4. In April 2008, an agreement was signed between the Congolese government and 'Group of Chinese Enterprises' (GEC). The agreement is the most significant African example to date of what has been labelled the "resources for infrastructure" model. It reflects China's enormous desire for guaranteed mineral supplies for its mushrooming manufacturing industries.

5. The GEC was composed of China Railway Group Ltd and Sinohydro, with financing from the Chinese government's export credit agency, Export-Import (Exim) Bank. Infrastructure projects, including railways, roads, dams, health and education facilities, were promised in exchange for copper and cobalt mining titles and rights in Katanga province (south-eastern DRC) to guarantee reimbursement of the finance. The value of the investments in the April 2008 agreement totalled US $9.25 billion, to be divided into US $3.25 billion and US $6 billion for the mining investment and infrastructure developments respectively. A joint-venture company was to be split between the Congolese (32%) and the Chinese (68%). Since the signature of the agreement, further revisions to the identity and shareholding of the partners have been made.

How the agreement came about

6. The agreement reflects the recent large increase of overseas investment by the Chinese state, working through the country's state-owned enterprises, entitled the "Go Global" strategy. The long-term goals of this strategy are to increase the productivity and competitiveness of Chinese companies.

7. The agreement clearly stipulates its purpose. Article 1 states that the agreement broadly provides for the GEC to "invest in the non-ferrous metals sector in the DRC" and for the DRC to "find the required financial resources to carry out national infrastructure projects that are deemed important and urgent".[i]

8. The DRC is one of the poorest countries in the world, with an immense need for long-term development. In the 2008 Human Development Index ratings of the UN Development Programme, it was listed 177 out of 179 countries.[ii] In contrast with this poverty, the country is one of the richest in terms of the variety and volume of its natural resources: minerals, forests, oil, water and wildlife. For over a century, the DRC has exemplified the 'resource curse', with its population suffering widespread corruption, armed conflict over resource-rich areas and autocratic rulers.

9. Throughout the 2006 presidential election, President Joseph Kabila had promised "cinq chantiers" - his five pillars of development, comprising infrastructure, employment, housing, water and electricity, and health and education. He has set these out as the test by which he will be judged in his current term of office and in the run-up to the next presidential elections scheduled for 2011. The wished-for post-election investment for the DRC has been described by members of the Ministry of Infrastructure, Public Works and Reconstruction as the equivalent of a "Marshall Plan" for the country. However, support from the 'traditional' Western donors for these five pillars has been noticeably lacking and slow to materialise.[iii] At the Consultative Group meeting for the DRC in Paris in November 2007, donors, including the British government and the European Union, pledged US $4 billion over three years, but the following year, donors themselves recognised that only a limited proportion of the money had been forthcoming.[iv]

10. Once the agreement with China was signed, President Kabila was quick to voice his frustration at the conditionalities of Western aid and the slow release of promised funds. The Chinese deal offered a welcome "no strings attached" alternative to traditional aid packages. This sentiment concords with China's policy of "mutual respect for sovereignty and territorial integrity", part of the five principles of peaceful co-existence by which China operates its foreign diplomacy and trade policies.[v] Both Congolese and Chinese government representatives have emphasised that the relationship between partners is not based on a colonial past and that there is mutual understanding. A representative of the Congolese Ministry of Mines explained to Global Witness researchers that the respective partners "are two developing countries who can understand one another".[vi]

Lack of transparency and democratic oversight

11. A debate on the agreement took place in the Congolese National Assembly on 9 May 2008, two weeks after its publication. The only Congolese government signatory to the deal, the Minister of Infrastructure, Public Works and Reconstruction (Minister Lumbi), gave an account of the agreement. This was followed by a heated debate which resulted in the formulation of ten recommendations.[vii] However, observers argued that the debate was conducted "just to calm people" and that it was simply "a formality...a semblance of a debate, producing recommendations that have no force."[viii] There has been little, if any, follow-up to the debate.

12. The Congolese side of the negotiations for the agreement was carried out by a small group of senior government officials from the Ministry of Infrastructure, Public Works and Reconstruction, the Ministry of Mines and the Office of the President. Representatives from the Ministries of Finance, Budget and Planning were excluded, despite being tasked with playing a major role in managing the country's limited financial resources and its debt levels.

13. Given the enormous importance of the deal for the DRC in the long term, there was a reasonable expectation that it should have been fully debated prior to signature in the Congolese Parliament and that a wider group of government representatives should have been involved in the negotiations and final approval of the deal. Coming so soon after the country's national and Presidential elections in 2006, such measures could have served as an endorsement of and test for the new democratic institutions. Instead, the negotiations took place behind closed doors and with very limited public debate.

Fiscal implications of the agreement

14. Parties to the deal have expressed their desire for it to provide economic growth to the DRC. However, the International Monetary Fund (IMF), on behalf of its national members, has expressed concern that the deal would risk loading dangerous levels of debt onto the DRC. Over recent months, the DRC has been attempting to meet the criteria necessary to join the IMF's Highly Indebted Poor Countries (HIPC) scheme whereby it could be relieved of the majority of its multilateral and bilateral debt obligations. The signing of the Chinese agreement meant that the IMF, along with various other creditors, became concerned that should the DRC's debt be removed through the HIPC process, the country would simply be replacing one type of damaging, unsustainable debt with another. At the time of writing, the parties to the deal are undertaking feasibility studies in an attempt to satisfy the IMF's demands.

15. The agreement emphasises a quick transition in the mining operation towards income generation. Specifically, Article 13.3.3 of the Agreement states that "if the feasibility study shows that the IRR [internal rate of return]...of the Chinese Companies Group is less that 19%, the DRC agrees to take all the necessary steps to improve the cooperation conditions in order to reach [an internal rate of return] threshold of 19% for the benefit of the Congolese Companies Group". This guarantee presents a number of potentially adverse consequences, creating an uneven playing field for mining and infrastructure investments in DRC. Firstly, additional mining concessions may be required to reach the promised IRR level because the level can be calculated in various ways, thus making the calculation process open to abuse. Furthermore, Article 13.3.3 appears to suggest that tax rules could be manipulated to ensure that the high rate was achieved.[ix] In addition, recent research indicates that such pressures to meet repayment deadlines risk heightening the likelihood of accidents and damage during the construction and operation phases of the mining project.[x]

16. Article 14.4 of the agreement is a stabilisation clause which ties the DRC to a legislative regime at a certain point in time from which they will not be able to diverge without paying compensation for resulting higher costs or lower revenues.[xi] A group of international mining law experts concluded that it is "one of the *most comprehensive and uncompromising stabilization clauses* that the authors have encountered" [italics in original].[xii] The provisions of the stabilisation clause run the risk of undermining the DRC's right to regulate key public policy areas such as the environment and human rights.

Poor labour conditions

17. There have been widespread reports of the poor treatment of workers in mines, smelters and other operations under Chinese and non-Chinese ownership in the DRC.[xiii] There are concerns that such practices will be repeated in the infrastructure and mining operations covered by the agreement. Chinese government policy states that Chinese companies should respect the laws and regulations of the countries where they operate. However, as a Congolese lawyer explained, the very weak capacity of the Congolese state to uphold the law is an intrinsic reason why Chinese companies are able to continue operating with poor labour conditions.[xiv]

Oversight and monitoring of operations

18. There are doubts about the Congolese capacity to provide quality control for the infrastructure projects. Without appropriate oversight and safeguards, the costs of works risk being overinflated. In addition, because of the inherent guarantees for the reimbursement of debt and for an internal rate of return at 19%, higher infrastructure costs would mean fewer finished projects for the same value of loan. In the same way, overinflated costs may in turn require a greater volume of minerals to be sold to repay the Chinese debt within a specific time frame.

19. To date, the Congolese government has shown a dependence on the Chinese parties for direction and guidance in valuing infrastructure. This reflects broader weaknesses and an imbalance in other aspects of the partnership, including in negotiation, technical expertise and operational capacity.[xv] Monitoring and oversight of both mining and infrastructure projects is vital to ensure that the deal brings the proposed benefits to the Congolese people. Despite professional expertise within Congolese government ministries, civil servants are seriously under-resourced and often lack appropriate training. Investment to improve the capacity of the Congolese administration to carry out its oversight role must be seen as a precursor to the implementation of programmes.

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[i] "Collaboration Agreement between the Democratic Republic of Congo and the Chinese Companies Group: China Railway Group Limited, Sinohydro Corporation regarding the development of a mining project and an infrastructure project in the Democratic Republic of Congo 2008", Article 1, *unofficial translation*, 22 April 2008.
[ii] United Nations Development Programme, Human Development Indices: A Statistical update 2008 - HDI rankings, 18 December 2008, online at http://hdr.undp.org/en/statistics/
[iii] Global Witness interviews with officials from international financial institutions, Kinshasa, 17-18 June 2008.
[iv] Consultative Group press release, "Consultative Group Meeting on Democratic Republic of Congo", 30 November 2007; Global Witness interview with official from international financial institution, Kinshasa, 17 June 2008.
[v] World Bank, "Africa's Silk Road: China and India's New Economic Frontier", 2007, p.171.
[vi] Global Witness meeting with Congolese Ministry of Mines official, Kinshasa, 25 September 2008.
[vii] Bell Pottinger - Democratic Republic of Congo press release, "DRC unveils its $9 billion minerals-for-jobs deal with China", 9 May 2008; La Prospérité Kinshasa, "Allocution du Ministre des Infrastructures, Travaux Publics et Reconstruction à l'occasion de la présentation à l'Assemblée nationale des accords signés entre le Gouvernement de la République Démocratique du Congo et la République Populaire de Chine", 10 May 2008.
[viii] Global Witness interview with human rights activist, Lubumbashi, 10 June 2008; Global Witness interview with Congolese parliamentarian, Kinshasa, 17 June 2008.
[ix] Expert analysis for Global Witness, 2008, unpublished.
[x] Leader et al., Global Project Finance Rights and Sustainable Development, ESRC project RES-156-25-0011, documents available at http://www.esrcsocietytoday.ac.uk.
[xi] Article 14.4 states that "all new legal and regulatory requirements which put [the Mining Joint Venture and the contractor in charge of infrastructure] at a disadvantage will not be applied", *unofficial translation*.
[xii] Expert analysis for Global Witness, 2008, unpublished.
[xiii] Global Witness report, "Digging in Corruption: Fraud, abuse and exploitation in Katanga's copper and cobalt mines", July 2006; Bloomberg, S. Clark, M. Smith & F. Wild, "China Lets Child Workers Die Digging in Congo Mines for Copper", 23 July 2008.
[xiv] Global Witness interview with Congolese lawyer, 11 June 2008.
[xv] According to a senior representative from the Ministry of Infrastructure, Public Works and Reconstruction, the Chinese partners established the exact price of each piece of infrastructure. Global Witness interview, Kinshasa, 19 June 2008.